

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR 08-30006-CBK

Plaintiff,

MOTION TO DISMISS INDICTMENT

vs.

MATTHEW DAVID STYMIEST,

Defendant.

Comes now Defendant Matthew David Stymiest, by and through his attorney, Assistant Federal Public Defender Edward G. Albright, and moves the Court for its Order pursuant to FED. R. CRIM. P. 12(b)(3)(B), dismissing the Indictment filed against him on the grounds that the federal government does not have jurisdiction to prosecute Defendant because he is not an Indian.

Defendant is charged with Assault Resulting in Serious Bodily Injury, in violation of 18 U.S.C. § 1153 and 113(a)(6). As charged in the Indictment, 18 U.S.C. § 1153 requires the Defendant to be an Indian as a necessary element of the offense. The Defendant asserts that he is not an Indian under the analysis set forth in *St. Cloud v. United States*, 702 F. Supp. 1465 (D.S.D. 1988), and therefore, this Court lacks federal subject matter criminal jurisdiction and the Indictment must be dismissed.

Defendant requests an evidentiary hearing for the development of the factual record in support of this motion. Defendant has filed a contemporaneous Memorandum of Law in Support

of Motion to Dismiss Indictment , which is incorporated herein by this reference.

WHEREFORE, Defendant requests that this Court dismiss the Indictment.

Dated this 23rd day of April, 2008.

Respectfully submitted,

JEFFREY L. VIKEN
Federal Public Defender
By:

/s/ Edward G. Albright

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2008, a true and correct copy of the Motion to Dismiss Indictment and Memorandum in Support were served upon the following person, by placing the same in the service indicated, as follows:

Randy Seiler	[]	U.S. Mail
Assistant U.S. Attorney	[]	Hand Delivery
225 S. Pierre Street, #337	[]	Facsimile
Pierre, SD 57501	[x]	Electronic Case Filing

/s/ Edward G. Albright

Edward G. Albright, Assistant Federal Public Defender